

IC 27-1-40

Chapter 40. Entry of Unauthorized Alien Companies

IC 27-1-40-1

"Trusteed surplus"

Sec. 1. As used in this chapter, "trusteed surplus" means the aggregate value of a United States branch's:

- (1) surplus and reserve funds required under IC 27-1-6; and
- (2) trust assets described in section 4 of this chapter;

plus investment income accrued on the items described in subdivisions (1) and (2) if the investment income is collected by the state for the trustees, less the aggregate net amount of all of the United States branch's reserves and other liabilities in the United States, as determined under section 6 of this chapter.

As added by P.L.173-2007, SEC.20. Amended by P.L.3-2008, SEC.210.

IC 27-1-40-2

"United States branch"

Sec. 2. As used in this chapter, "United States branch" means:

- (1) an entity that is considered, for purposes of this chapter, to be a domestic company through which insurance business is transacted in the United States by an alien company; and
- (2) the alien company's assets and liabilities that are attributable to the insurance business transacted in the United States.

As added by P.L.173-2007, SEC.20.

IC 27-1-40-3

Indiana as state of entry for alien company

Sec. 3. Indiana may serve as a state of entry to enable an alien company to transact insurance business in the United States through a United States branch if the United States branch:

- (1) qualifies under this title for a certificate of authority as if the United States branch were a domestic company organized under this title; and
- (2) establishes a trust account that meets the following conditions:

(A) The trust account is established under a trust agreement approved by the commissioner with a United States bank.

(B) The amount in the trust account is at least equal to:

- (i) the minimum capital and surplus requirements; or
- (ii) the authorized control level risk based capital requirements;

whichever is greater, that apply to a domestic company that possesses a certificate of authority to transact the same kind of insurance business in Indiana as the United States branch will transact.

As added by P.L.173-2007, SEC.20.

IC 27-1-40-4

Trust account; requirements; trust agreement

Sec. 4. (a) A trust account established under section 3(2) of this chapter must contain, at all times, an amount equal to the United States branch's reserves and other liabilities, plus the:

- (1) minimum capital and surplus requirement; or
- (2) authorized control level risk based capital requirement;

whichever is greater, that applies to a domestic company granted a certificate of authority under this title to transact the same kind of insurance business as the United States branch transacts.

(b) One (1) or more trustees must be appointed to administer the trust.

(c) A trust agreement for a trust account established under section 3(2) of this chapter, and amendments to the trust agreement:

- (1) must be authenticated in a manner prescribed by the commissioner; and
- (2) are effective only when approved by the commissioner after the commissioner finds all of the following:
 - (A) The trust agreement and amendments are sufficient in form and in conformity with law.
 - (B) All trustees appointed under subsection (b) are eligible to serve as trustees.
 - (C) The trust agreement is adequate to protect the interests of the beneficiaries of the trust.

(d) The commissioner may withdraw an approval granted under subsection (c)(2) if, after notice and hearing, the commissioner determines that one (1) or more of the conditions required under subsection (c)(2) for approval no longer exist.

(e) The commissioner may approve modifications of, or variations in, a trust agreement under subsection (c) if the modifications or variations are not prejudicial to the interests of Indiana residents, United States policyholders, and creditors of the United States branch.

(f) A trust agreement for a trust account established under section 3(2) of this chapter must contain provisions that:

- (1) vest legal title to trust assets in the trustees and lawfully appointed successors of the trustees;
- (2) require that all assets deposited in the trust account be continuously kept in the United States;
- (3) provide for appointment of a new trustee in case of a vacancy, subject to the approval of the commissioner;
- (4) require that the trustees continuously maintain a record sufficient to identify the assets of the trust account;
- (5) require that the trust assets consist of:
 - (A) cash;
 - (B) investments of the same kind as the investments in which funds of a domestic company may be invested; and
 - (C) interest accrued on the cash and investments specified in clauses (A) and (B), if collectible by the trustees;
- (6) establish that the trust:
 - (A) is for the exclusive benefit, security, and protection of:

- (i) United States policyholders of the United States branch; and
 - (ii) United States creditors of the United States branch after all obligations to policyholders are paid; and
- (B) shall be maintained as long as any liability of the United States branch arising out of the United States branch's insurance transactions in the United States is outstanding; and

(7) establish that trust assets, other than income as specified in subsection (g), may not be withdrawn or permitted by the trustees to be withdrawn without the approval of the commissioner, except for any of the following purposes:

(A) To make deposits required by the law of any state for the security or benefit of all policyholders of the United States branch in the United States.

(B) To substitute other assets permitted by law and at least equal in value and quality to the assets withdrawn, upon the specific written direction of the United States manager of the United States branch when the United States manager is empowered and acting under general or specific written authority previously granted or delegated by the alien company's board of directors.

(C) To transfer the assets to an official liquidator or rehabilitator under a court order.

(g) A trust agreement for a trust account established under section 3(2) of this chapter may provide that income, earnings, dividends, or interest accumulations of the trust assets may be paid over to the United States manager of the United States branch upon request of the United States manager if the total amount of trust assets following the payment to the United States manager is not less than the amount required under subsection (a).

(h) A trust agreement for a trust account established under section 3(2) of this chapter may provide that written approval of the insurance supervising official of another state in which:

- (1) trust assets are deposited; and
- (2) the United States branch is authorized to transact insurance business;

is sufficient, and approval of the commissioner is not required, for withdrawal of the trust assets in the other state if the amount of total trust assets after the withdrawal will not be less than the amount required under subsection (a). However, the United States branch shall provide written notice to the commissioner of the nature and extent of the withdrawal.

(i) The commissioner may at any time:

- (1) make examinations of the trust assets of a United States branch that holds a certificate of authority under this chapter, at the expense of the United States branch; and
- (2) require the trustees to file a statement, on a form prescribed by the commissioner, certifying the assets of the trust account and the amounts of the assets.

(j) Refusal or neglect of a trustee to comply with this section is grounds for:

- (1) the revocation of the United States branch's certificate of authority; or
- (2) the liquidation of the United States branch.

As added by P.L.173-2007, SEC.20.

IC 27-1-40-5

Certificate of authority for United States branch; requirements

Sec. 5. (a) The commissioner shall require a United States branch to do the following before granting the United States branch a certificate of authority to transact insurance business as described in section 3(1) of this chapter:

(1) Comply with this chapter and any other requirement of this title.

(2) Submit the following:

(A) A copy of the current charter and bylaws of the alien company that intends to transact business through the United States branch and any other documents determined by the commissioner to be necessary to provide evidence of the kinds of insurance business that the alien company is authorized to transact. Documents submitted under this clause must be attested to as accurate by the insurance supervisory official in the alien company's domiciliary jurisdiction.

(B) A full statement, subscribed and affirmed as true under penalty of perjury by two (2) officers or equivalent responsible representatives of the alien company in a manner prescribed by the commissioner, of the alien company's financial condition as of the close of the alien company's latest fiscal year, showing the alien company's:

- (i) assets;
- (ii) liabilities;
- (iii) income disbursements;
- (iv) business transacted; and
- (v) other facts required to be shown in the alien company's annual statement reported to the insurance supervisory official in the alien company's domiciliary jurisdiction.

(C) An English translation, if necessary, of any document submitted under this subdivision.

(3) Submit to an examination of the affairs of the alien company that intends to transact business through the United States branch at the alien company's principal office in the United States. However, the commissioner may accept a report of the insurance supervisory official in the alien company's domiciliary jurisdiction in lieu of the examination required under this subdivision.

(b) The commissioner may at any time hire, at a United States branch's expense, any independent experts that the commissioner considers necessary to implement this chapter with respect to the

United States branch.

As added by P.L.173-2007, SEC.20.

IC 27-1-40-6

United States branch filing requirements

Sec. 6. (a) A United States branch shall file with the commissioner, not later than March 1, May 15, August 15, and November 15 of each year, all of the following:

(1) Statements of the insurance business transacted in the United States, the assets held by or for the United States branch in the United States for the protection of policyholders and creditors in the United States, and the liabilities incurred against the assets. All of the following apply to the statements filed under this subdivision:

(A) The statements must contain information concerning only the United States branch's assets and insurance business in the United States.

(B) The statements must be in the same form as statements required of a domestic company that possesses a certificate of authority to transact the same kinds of insurance business as the United States branch transacts.

(C) The statements must be filed as follows:

(i) Quarterly statements filed not later than May 15, August 15, and November 15 of each year for the first three (3) quarters of the calendar year.

(ii) An annual statement, filed not later than March 1 of each year.

(2) A trustee surplus statement, in a form prescribed by the commissioner, at the end of the period covered by each statement described in subdivision (1)(C). In determining the net amount of the United States branch's liabilities in the United States to be reported in the statement of trustee surplus, the United States branch shall make adjustments to total liabilities reported on the accompanying annual or quarterly statement as follows:

(A) Add back liabilities used to offset admitted assets reported in the accompanying quarterly or annual statement.

(B) Deduct:

(i) unearned premiums on insurance producer balances or uncollected premiums that are not more than ninety (90) days past due;

(ii) losses reinsured by reinsurers authorized to do business in Indiana, less unpaid reinsurance premiums to be paid to the authorized reinsurers;

(iii) reinsurance recoverables on paid losses from reinsurers not authorized to do business in Indiana that are included as an asset in the annual statement, but only to the extent that a liability for the unauthorized recoverables is included in the liabilities report in the trustee surplus statement;

- (iv) special state deposits held for the exclusive benefit of policyholders of a particular state that do not exceed net liabilities reports for the particular state;
- (v) secured accrued retrospective premiums;
- (vi) if the alien company transacting business through the United States branch is a life insurer, the amount of the alien company's policy loans to policyholders in the United States, not exceeding the amount of legal reserve required on each policy, and the net amount of uncollected and deferred premiums; and
- (vii) any other nontrust asset that the commissioner determines secures liabilities in a manner substantially similar to the manner in which liabilities are secured by the unearned premiums, losses reinsured, reinsurance recoverables, special state deposits, secured accrued retrospective premiums, and policy loans referred to in items (i) through (vi).

(3) Any additional information that relates to the business or assets of the alien company and is required by the commissioner.

(b) The annual statement and trustee surplus statement described in subsection (a) must be signed and verified by the United States manager, the attorney in fact, or an empowered assistant United States manager, of the United States branch. Items of securities and other property held under a trust agreement must be certified in the trustee surplus statement by the United States trustees.

(c) Each report concerning an examination of a United States branch conducted under section 4(i) of this chapter must include a trustee surplus statement as of the date of examination and a general statement of the financial condition of the United States branch.

As added by P.L.173-2007, SEC.20.

IC 27-1-40-7

Issuance and renewal of certificate of authority

Sec. 7. (a) Before issuing a new or renewal certificate of authority to a United States branch, the commissioner may require satisfactory proof:

- (1) in the charter of the alien company transacting business through the United States branch;
- (2) by an agreement evidenced by a certified resolution of the alien company's board of directors; or
- (3) otherwise as required by the commissioner;

that the United States branch will not engage in any insurance business not authorized by this chapter and by the alien company's charter.

(b) The commissioner shall issue a renewal certificate of authority to a United States branch if the commissioner is satisfied that the United States branch is not delinquent in any requirement of this title and that the United States branch's continued insurance business in Indiana is not contrary to the best interest of the citizens of Indiana.

(c) A United States branch may not be:

(1) granted a certificate of authority to transact any kind of insurance business in Indiana that is not permitted to be transacted in Indiana by a domestic company granted a certificate of authority under this title; or

(2) authorized to transact an insurance business in Indiana if the United States branch transacts, anywhere in the United States, any kind of business other than an insurance business (and business incidental to the kind of insurance business) that the United States branch is authorized to transact in Indiana.

(d) A United States branch entering the United States through Indiana or another state may not be authorized to transact an insurance business in Indiana if the United States branch fails to substantially comply with any requirement of this title that:

(1) applies to a similar domestic company that is organized after July 1, 2007; and

(2) the commissioner determines is necessary to protect the interest of the policyholders.

(e) Unless the commissioner determines that the kind of insurance is not contrary to the best interest of the citizens of Indiana, a United States branch may not transact any kind of insurance business that is not permitted to be transacted in Indiana by a similar domestic company that is organized after July 1, 2007.

(f) A United States branch may not be authorized to transact an insurance business in Indiana unless the United States branch maintains correct and complete records of the United States branch's transactions that are:

(1) open to inspection by any person who has the right to inspect the records; and

(2) maintained at the United States branch's principal office in Indiana.

As added by P.L.173-2007, SEC.20.

IC 27-1-40-8

Insolvency proceedings

Sec. 8. If the commissioner determines from a quarterly or annual statement, a trusted surplus statement, or another report that a United States branch's trusted surplus is less than:

(1) the minimum capital and surplus requirements; or

(2) the authorized control level risk based capital requirements;

whichever is greater, that apply to a domestic insurer granted a certificate of authority to transact the same kind of insurance business in Indiana, the commissioner may proceed under IC 27-9 against the United States branch as if the United States branch were an insurer in such condition that further transaction by the insurer of insurance business in the United States would be hazardous to the insurer's policyholders, creditors, or residents of the United States.

As added by P.L.173-2007, SEC.20.